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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 255

J. O. B. PRICE, Petitioner,

versus

LOUISIANA RURAL REHABILITATION CORPORATION, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

To the Honorable, The Supreme Court of the United States:

Petitioner, John O. B. Price (plaintiff below), prays that writ of Certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause.

JURISDICTION

Review is sought under United States Code Title 28, Section 730 (Judicial Code S. 240). Judgment of the Court of Appeal was rendered March 29, 1943. Petition for rehearing was timely filed on April 17, 1943, and rehearing

was denied by the Court of Appeal, without opinion on May 11, 1943. The opinion of the Court of Appeal is reported in 134 Federal Reporter (2nd) page 548.

QUESTION PRESENTED

Question No. 1. When a farmer files in a United States District Court a petition for extension of time to pay his debts, under United States Code, Title 11, Section 203 (Chandler Act), is the District Court, by the mere filing of the petition, invested with exclusive possession and control of the farm involved the same as if he had filed petition to be adjudged bankrupt; so that all operation of the farm and contracts made by the farmer after such filing are null and void?

Question No. 2. When a farmer files a petition for extension of time to pay his debts as stated in Question No. 1, and shortly after filing the petition effects a composition with his creditors out of court, and no further proceedings are taken under said petition, and the District Court never takes any possession or control of the farm, and the farmer continues to operate the farm the same as if no petition had been filed, and three years afterwards makes a lease of a farm and incurs heavy expenses to perform his obligations under the lease; is the lease null and void, and the lessee relieved of all obligation thereunder, solely because of the filing of said petition three years before?

The case was heard by three judges in the United States Circuit Court of Appeals, two of whom answered these questions in the affirmative, and one answered in the negative.

The statute referred to in the foregoing questions is Title 11 of the United States Code, Bankruptcy, Section 203, which reads in its pertinent parts, as follows:

> "(c) At any time prior to March 4, 1940, a petition may be filed by any farmer, stating that the farmer is insolvent, or unable to meet his debts as they mature, and that it is desirable to effect a compromise or an extension of time to pay his debts . . .
>
> (d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.
>
> (e) The conciliation commissioner shall promptly call the first meeting of the creditors . . . After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposed to the court, *the court shall exercise such control over the property of the farmer as the court deems in the best interest of the farmer and his creditors.*" (Underline ours.)

Sections (f), (g), (h), (i), (j), (k), (l), and (m) are procedure for effecting composition between the farmer and his creditors, which are not pertinent here.

> "(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of the court, praying for relief under this section, shall immediately subject the farmer and all of his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court . . .

In proceedings under this section, *except as otherwise provided herein*, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court, or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court." (Underline ours.)

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt . . ."

STATEMENT OF MATTER INVOLVED

Petitioner, J. O. B. Price, owns a plantation called the O. K. Plantation containing 1264 acres, situated in Catahoula Parish, State of Louisiana. In the year 1933, petitioner became involved in debt, and under the above quoted law, filed a petition in the United States District Court for the Western District of Louisiana, asking for extension of time to pay his debts and injunction against a threatening foreclosure of mortgage (R. 54). Upon this application, the District Court, *ex parte*, enjoined foreclosure of the mortgage and referred the matter to a con-

ciliation commissioner (R. 62). All of this was done in November, 1933.

Petitioner then reached a compromise with his creditors outside of court, and took no further action in the proceeding, and forgot that he had ever gone into court. The District Court likewise dropped the proceeding, and took no further action. The Court never took possession of the farm, and exercised no control and rendered no orders regarding it.

On November 11, 1936, a creditor filed in the District Court a petition complaining that no further action had been taken in the matter, and asking that the proceedings be dismissed (R. 64). In this proceeding the conciliation commissioner made the following report to the District Judge (R. 75):

> "The debtor has proceeded to adjust his debts without the aid of the jurisdiction of this Court and has failed to diligently prosecute his proceeding, and at this time, more than three years after the proceeding was first instituted under Section 75, the date of filing being October 13, 1933, has not yet submitted offer for composition and extension, nor has he given any reasonable excuse for not having made such offer.
>
> Under the express terms of Section 75 requiring that the debtor submit his proposal at the first meeting of creditors and under the jurisprudence which has been established interpreting the filing of proposals and diligent prosecution by the debtor of his proceeding, the proceeding should be dismissed and I so recommend to the Court."

The debtor made no objection, and on May 17, 1937, the United States District Court rendered judgment, dismissing the proceeding filed in 1933 (R. 76).

During all of these proceedings petitioner had continued to be in undisturbed possession of the farm. Up to the year 1935 he farmed it himself. For the years 1935 and 1936 he leased it to J. R. Belgarde to farm. Belgarde failed to comply with his lease, and in November, 1935, petitioner cancelled the lease to Belgarde, and personally re-possessed the property.

On March 16, 1936, petitioner entered into a written lease of the farm to respondent, Louisiana Rural Rehabilitation Corporation for the years 1936 and 1937 by lease shown in the Record at page 14.

This lease stipulates that Price shall build sixteen tenant houses on the property by April 1st, 1936. Respondent agreed to pay $4852.00 cash rent for the two years.

Petitioner borrowed $2800.00 from the bank to build these houses; and built them to the satisfaction of respondent (R. 23). He built these houses solely to comply with the lease, and would have had no use for them in the normal operation of the plantation (R. 24).

In the meanwhile Belgarde saw a chance to blackmail petitioner by claiming that his two year lease was still in effect. This was a frivolous claim because he had moved away from the place long before, and had made no attempt to start any farming operations for the year 1936, and had completely abandoned his lease. Respondent, Louisiana Rural Rehabilitation Corporation showed one

of the evils of bureaucracy. They promptly refused to go ahead with the lease, and cancelled the lease as arbitrarily as a despot would have done. They made no investigation as to whether Belgarde's claim was well-founded. Petitioner tendered them possession, but they made no effort to take possession. They gave no thought whatsoever to the fact that petitioner had impoverished himself to build the houses which were his obligations under the lease.

During the negotiations for lease, and in this action of refusing to carry out the lease, no claim was made by anyone that the proceedings back in 1933 for extension of time to pay debts prevented petitioner from signing this lease. The idea that petitioner could not make this lease did not enter the minds of anyone.

On October 6, 1936, petitioner filed this suit for the $4852.00 due on the lease (R. 2). Respondent filed an answer which is a general denial and averment that petitioner could not deliver to them possession of the lease because Belgarde was in possession (R. 9).

On the trial of this case in the District Court, petitioner defeated this defense beyond any dispute by showing that Belgarde had treated his lease as cancelled, and had surrendered possession in November, 1935. Respondent admitted that it had made no attempt to take possession. The defense that petitioner could not deliver possession was practically abandoned, and was not upheld by either court.

However, respondent had inserted in its answer, purely as an afterthought, one paragraph claiming that the leased premises were still under the jurisdiction of

the United States Court under the petition filed in 1933. The District Court and the Court of Appeals sustained this defense. The opinion of the Court of Appeals (134 Fed. (2d) 548) is as follows:

> "Appellant contends that Section 75, supra, is not a true bankruptcy statute, in that it provides for the relief of debtors by composition and extension of debts instead of relieving bankrupts by extinguishment of debts; that dominion and control over the property of a bankrupt passes at once to the trustee, whereas the debtor is privileged to retain possession; and that by reason of the express provision of subsection (e) of the statute, after filing of the petition and prior to confirmation, the court exercises only such control over the property of the debtor as it deems to the best interests of the debtor and his creditors. Appellant points out that the court exercised no control over his property beyond the appointment of successive conciliation commissioners, and argues that he was free to deal with his property as he chose.
>
> It may be conceded that farmer-debtor proceedings under Section 75 differ materially from ordinary bankruptcy proceedings, but it does not follow that the debtor's retention of physical possession empowers him to deal with the property without regard to the bankruptcy court. Indeed, the statute itself precludes any such construction. Section 75 (n) of the Act provides that the filing of the petition for composition or extension shall immediately subject the farmer and all of his property to the exclusive jurisdiction of the bankruptcy court, and that the jurisdiction and powers of the court with respect to the property of the debtor shall be the same as if a decree of adjudi-

cation as a voluntary bankrupt had been entered on the day the petition was filed.

In farmer-debtor proceedings, as in bankruptcy, it is the statutory purpose to afford equitable relief to the debtor and his creditors. Their antagonistic interests can be impartially protected only by investiture of exclusive jurisdiction over the property in a court of equity that is given administrative control equal to the task. Section 75 (n) plainly subjects the property of the debtor to the exclusive jurisdiction of the bankruptcy court, and charges the court with the duty of administering that property so as to safeguard and effectuate the interests of both debtor and creditor. Moreover, the court's control over the debtor and his property is expressly made coextensive with that of the court in ordinary bankruptcy proceedings. One who files a voluntary petition in bankruptcy, and is adjudicated a bankrupt, is wholly without power to alienate his property subsequent to the entry of the decree.

The filing of the debtor's petition was a caveat and notice to all the world. Knowledge of appellant's incapacity to make a valid lease of the property was imputed to both parties, each being presumed to know the law; and acts done by either in reliance upon the validity of the contract cannot be said to result from the inducement of the other. Appellee never took possession under the lease, derived no benefit from it, made no representation in conflict with the position it now takes, and is not estopped to assert the invalidity of the contract."

His honor, Judge Hutcheson, dissented in the following language:

"I agree, too, that the possession of property, which under the statute appellant had, was subject to the supervision and control of the bankruptcy court, and that any contract he made with regard to that possession was subject to disapproval by the court. I do not agree that he was without capacity to make the lease in question. I think it clear that he could make it subject only to the disapproval of the court and that when it was signed and was not disapproved, appellee could not disaffirm it on the ground that it had not been positively approved.

The appellee did not decline to carry out the contract on the ground of appellant's want of authority to make it. It was clearly to the advantage of the property that the contract be made, and it is quite clear that if approval of the bankruptcy court had been requested, it would have been obtained . . . In these circumstances, I think it does not lie in appellee's mouth to set up now an objection to the lack of approval by the bankruptcy court which if it had been asserted at the time, appellant would and could have removed."

REASONS RELIED ON FOR GRANTING WRIT

Petitioner respectfully suggests that the Court of Appeals has in this case decided an important question of Federal law, which has not been, but should be settled by this Court.

This Court has frequently recognized the importance of the laws adopted in the past ten years for the relief of farmers oppressed with debt. (Frazier-Lemke Act, Chandler Act.)

Certainly the question of possession under these acts; whether or not the farmer is left in possession or the district court takes possession: is of vital importance.

Petitioners respectfully suggest that the jurisprudence on this subject established by the decision of the Court of Appeals should be altered and settled by this Court, because that jurisprudence is not in accordance with the statutes; and imposes an impossible burden on district courts; and hardships on farmer-debtors; as follows:

1. The decision of the Court of Appeals holds that the status of a farmer applying for extension of time to pay his debt under the Chandler Act is the same as the status of a farmer petitioning to be adjudged a bankrupt, whereas the two are vitally different; the function of bankruptcy being to dispose of the property of the farmer quickly to satisfy his debts; and the function of the Chandler Act being to permit the farmer to hold his property and work out his debts.

2. The Court of Appeals overlooks and gives no effect to the provision of Sec. 203 (e) that the Court exercise such control over the property of the farmer as the court deems in the best interest of the farmer; and the provision of Sec. 203 (j) that the terms of a composition or extension proposal *may* provide for supervision over the farmer's affairs: showing that it is not the intent of the Act for the Court to take control of the farm, but that the Court may do so in the cases where the Court deems it necessary, by special order.

3. The Court of Appeals' decision puts an impossible burden on District Courts, because it provides that they

must supervise the operation of farms and approve of every lease or other contract made by a farmer in the multifarious operations of numerous farms.

4. The Court of Appeals takes from a farmer control of the operation of his farm, and thereby makes it very much more difficult, if not impracticable, for him to operate his farm at a profit, so as to pay his debts.

5. The Court of Appeals assumes that it is necessary here to decide whether or not a farmer may sell his property, after filing a petition under the Chandler Act, whereas the only question before the Court is whether or not a farmer may make a short term lease of great profit to the farm in the ordinary course of business.

Petitioner respectfully suggests that the dissenting opinion in the Court of Appeals is the more correct law.

WHEREFORE, petitioner respectfully prays that a writ of certiorari issue directing the Circuit Court of Appeals for the Fifth Circuit to certify and send to this court for its review and determination a full transcript of the record and all proceedings in the case of J. O. B. Price versus Louisiana Rural Rehabilitation Corporation, No. 10510 on the Docket of that Court.

Petitioner further prays that the judgment of the Circuit Court of Appeals for the Fifth Circuit in this case be reversed, and that petitioner have such further relief as to this Court may seem proper.

G. P. BULLIS,
Attorney for J. O. B. Price, Petitioner.

SUPPORTING BRIEF

Petitioner respectfully suggests that decision of the Court of Appeals is at variance with the law, and will make untold confusion and loss in the handling of farmer's petitions for extension of time to pay debts, unless corrected by granting of this writ.

The statute seems clearly against the holding of the Court of Appeals.

Section 203 (e) expressly provides that the Court shall exercise such control as the Court deems to the best interest of the farmer and creditor.

This seems clear, and contradicts the holding of the Court of Appeals that the Court is vested with immediate and complete control without any special assumption of control.

To make it certain, we refer to section 203(j) which provides that when, after certain proceedings are had, a composition or extension proposal is made, this proposal "*may* provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified."

Section 203 (b) provides for the costs of supervision "if the creditors at any time desire supervision over the farming operations of a farmer."

All of this statute negatives the decision of the Court of Appeals that the filing of a petition under the Chandler

Act divests the farmer of all control of his property, just as a petition in bankruptcy would do.

It would place an impossible burden on the District Courts, to put them in the farming business, as would be done if they have to supervise and approve the contracts of debtor-farmers.

No farmer could successfully operate his farm, if burdened with the task of securing consent of a Court for every detail of the operation.

It therefore seems that this matter is of sufficient general importance to justify granting of writ.

SECOND GROUND FOR COURT OF APPEALS DECISION

The decision of the Court of Appeals, in an apparently *obitur dictum* paragraph, holds that the decision of the District Court against petitioner might be affirmed on another ground (not mentioned by the District Court), namely, that respondent could not be required under Louisiana law to take title to the O. K. Plantation because litigation was threatened and disturbance probable.

This has nothing to do with this application for writ, but we would point out that the Court of Appeals is in error as to this also.

The decisions of the Supreme Court of Louisiana cited do not support this holding. The cases of *Kardis v. Barrere, 136 So. 135,* and *Calhoun v. Teal, 106 La. 47,* are cases of recission of contract for error. The cases of *Michenor v. Reinach, 49 La. Ann. 360* and *Bodcaw Lumber*

Co. v. White, 121 La. 715, are cases where the Louisiana Court held a party did not have to accept a deed to land because the title was in litigation. In none of these cases was a lease involved, and in none was a situation like that at bar, where a mischievous person made an entirely unsupported and frivolous claim. If the law permitted a contract to be evaded on such a ground, contracts would be entirely uninforceable.

The Louisiana law on this subject is contained in the following articles of the Louisiana Civil Code:

> "Art. 2692. The lessor is bound from the very nature of the contract, and without any clause to that effect: 1, To deliver the thing leased to the lessee . . ."
>
> "Art. 2696. If the lessee be evicted, the lessors is answerable for the damage and loss which he sustained by the interruption of the lease."
>
> "Art. 2703. The lessor is not bound to guarantee the lessee against disturbances caused by persons not claiming any right to the premises; but in that case the lessee has a right of action for damages sustained against the person occasioning such disturbance."
>
> "Art. 2704. If the persons by whom those acts of disturbance have been committed, pretend to have a right to the thing leased, or if the lessee is cited to appear before a court of justice to answer to the complaint of the person thus claiming the whole or a part of the thing leased, or claiming some servitude on the same, he shall call the lessor in warranty, and shall be dismissed

from the suit if he wishes it, by naming the person under whose right he possesses."

It was clearly the legal duty of respondent, under its contract, to accept the possession of the O. K. Plantation tendered to it by petitioner, and call on petitioner to defend any suit brought by Belgarde, which obviously would never have happened.

Respectfully submitted,

G. P. BULLIS,
Attorney for Petitioner.